

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
PECOS DIVISION

GERARDO VELASQUEZ, AND §
JESSICA ZABILSKI, INDIVIDUALLY §
AND AS NEXT FRIEND OF ZYLER §
ZABILSKI, ZARIA ZABILSKI, ZELLA §
ZABILSKI, AND ZANE ALLEN, §
Plaintiffs § CIVIL ACTION NO.: 4:19-cv-00001
VS. § (JURY TRIAL)
§
RAJ KUMAR and PANTHER §
INTERSTATE CARRIERS, INC., §
Defendants §
§

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Pursuant to Title 28 U.S.C. §§1332, 1441(a) and (e), and 1446, Defendants, RAJ KUMAR and PANTHER INTERSTATE CARRIERS, INC., files this, their *Notice of Removal* to the United States District Court for the Western District of Texas, Pecos Division, on the basis of diversity of citizenship and amount in controversy, and respectfully shows the following:

I. FACTUAL BACKGROUND

1. On November 30, 2018, an action was commenced by Plaintiffs Gerardo Velasquez, Jessica Zabilski, Zyle Zabilski-Encantro, Zella Zabilski-Velasquez, Zonia Zabilski-Velasquez, and Zane Allen in the 143rd Judicial District Court of Reeves County, Texas styled **ZABILSKI, ET AL. v. KUMAR, ET AL.**, Cause No. 18-11-22724-CVR. *See Exhibit 1.*

2. On December 6, 2018, service of Plaintiffs' Original Petition (hereinafter "Pl. Pet.") on Defendant RAJ KUMAR was executed by delivering to the Chairman of the Texas Transportation Commission, by delivering in person to Bailey Hamer, registered agent

authorized to accept service of process of behalf of Texas Transportation Commission. *See Exhibit 3.*

3. On December 6, 2018, service of Plaintiffs' Original Petition (hereinafter "Pl. Pet.") on Defendant PANTHER INTERSTATE CARRIERS, INC. was executed by delivering to the Texas Secretary of State, by delivering in person to Michelle Robinson, registered agent authorized to accept service of process of behalf of the Texas Secretary of State. *See Exhibit 4.*

4. Plaintiffs filed their First Amended Petition on December 20, 2018. *See Exhibit 2.*

5. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *See Exhibit 2.*

Exhibit 2.

6. Defendant files this notice of removal within 30 days of receiving service of Plaintiffs' pleading. *See 28 U.S.C. §1446(b).*

7. Attached hereto are copies of the following documents:

Exhibit 1: Plaintiff's Original Petition;

Exhibit 2: Plaintiff's First Amended Petition;

Exhibit 3: Citation to RAJ KUMAR and Return of Service; and

Exhibit 4: Citation to PANTHER INTERSTATE CARRIERS, INC. and Return of Service.

II. BASIS FOR REMOVAL

8. Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

A. Plaintiff and Defendants Are Diverse

9. Upon information and belief, Plaintiffs are, and were (at the time the lawsuit was filed) residents of Coryell County in the state of Texas and thus, citizens of Texas. *See Exhibit 2 at Sect. II.* On information and belief, Plaintiffs intend to continue residing in Texas and are thus

domiciled in Texas. See *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011) (evidence of a person's place of residence is *prima facie* proof of his state of domicile, which presumptively continues unless rebutted with sufficient evidence of change).

10. Upon information and belief, Defendant RAJ KUMAR, is an individual whose last known mailing address is 3581 N. Parkway Drive, Apt. 142, Fresno, California 93722-4740 and thus, is a citizen of California. On information and belief, Defendant KUMAR intends to continue residing in California and is thus domiciled in California. See *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011) (evidence of a person's place of residence is *prima facie* proof of his state of domicile, which presumptively continues unless rebutted with sufficient evidence of change).

11. Upon information and belief, Defendant PANTHER INTERSTATE CARRIERS, INC., is a foreign corporation formed under the laws of the state of California with its principal place of business in the state of California and is a citizen of the State of California for diversity purposes. *See Exhibit 2* at Sect. II.

12. At the time of the commencement of the action, Defendant RAJ KUMAR was and is a citizen of the State of California.

13. At the time of the commencement of the action, Defendant PANTHER INTERSTATE CARRIERS, INC. was and is a foreign corporation formed under the laws of the state of California with its principal place of business in the state of California and is a citizen of the State of California for diversity purposes. *See Exhibit 2* at Sect. II.

14. Complete diversity exists between Plaintiff and all Defendants.

B. The Amount in Controversy Exceeds the Jurisdictional Requirements for Subject Matter Jurisdiction

15. Plaintiffs' Original Petition states that "Plaintiffs seek monetary relief of over \$1,000,000." *See Exhibit 2* at Sect. IV. This evidence clearly demonstrates that the amount in controversy in this case exceeds the jurisdictional requirements.

III. THE REMOVAL IS PROCEDURALLY CORRECT

16. Defendants first received notice of this lawsuit on December 27, 2018, when Plaintiffs' counsel sent a copy via fax and email to Defendant Panthers Interstate Carriers, Inc. insurer. Thus, Defendants are filing this Notice within the 30-day period required by 28 U.S.C. § 1446(b).

17. Venue is proper in this District and Division under 28 U.S.C. §1446(a) because i) this District and Division include the county in which the state action has been pending, and ii) a substantial part of the events giving rise to Plaintiffs' claims allegedly occurred in this District and Division.

18. Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this Notice.

19. Promptly after Defendants file this Notice of Removal, written notice of the filing will be given to Plaintiffs pursuant to 28 U.S.C. §1446(d).

20. Promptly after Defendants file this Notice of Removal, a true and correct copy of same will be filed with the Clerk of the Reeves County District Court pursuant to 28 U.S.C. §1446(d).

IV. CONCLUSION

Based upon the foregoing, the exhibits submitted in support of this removal, and other documents filed contemporaneously with this Notice of Removal, Defendants, RAJ KUMAR

and PANTHER INTERSTATE CARRIERS, INC., hereby removes this case to this Court for trial and determination.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

BY: /s/ Molly L. Pela

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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 4, 2019 a true and correct copy of the foregoing instrument was delivered to all known counsel of record in accordance with the Federal Rules of Civil Procedure, and any applicable Local Rules, as follows:

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/s/ Molly L. Pela

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